Supreme Court, U.S.
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86-2046

NUMBER

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

RANDAL WILLIAM HOWARD
Petitioner

v.

STATE OF ARIZONA, Ex rel,
ARIZONA DEPARTMENT OF REVENUE
Respondent

Petition for Writ of Certiorari to the
ARIZONA SUPREME COURT

Randal W. Howard
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To the Supreme Court of the United States:

The above named petitioner presents this, his petition for certiorari and shows unto the Supreme Court of the United States as follows:

QUESTIONS PRESENTED

There were timely presented to the Courts below, and there are now presented to This Court for review substantial Federal Questions as follows:

(1) Is the Arizona Revised StatutesTitle 43 as applied un-constitutional on its face because of its imposing a tax upon the right to provide for ones self in the absence of some sort of agreement or contract which can be referred to as authority, or some clear and present benefit of which the Petitioner partakes?

(2) Does Arizona Revised Statutes Title 43 as construed and applied by the Arizona Superior Court violate the rights of the Petitioner as set forth in the Declaration of Independence and reiterated at the 5th amendment to the Constitution of the United States, to wit: "Life, Liberty, and the Pursuit of Happiness" and "Life, Liberty and Property"? And does Arizona Revised Statutes, as applied to Petitioner result in the Taking of Property without Just Compensation, Pea. Art. 5, Bill of Rights?

LIST OF PARTIES TO PROCEDING

Action brought in Arizona Superior Court on behalf of State of Arizona, Ex Rel, Arizona Department of Revenue, by Sue M. Curry, Auditor, through John M. Ranby, Assistant Attorney General.

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DATE OF JUDGEMENT AND ORDERS TO BE REVIEWED

The Order of the Superior Court of Arizona for the County of Maricopa was entered November 1, 1985. The Order of the Superior Court was appealed to the Arizona Court of Appeals in a Timely manner, and the Judgement of the Superior Court was Affirmed, whereupon a Timely Petition for Review by the Arizona Supreme Court was filed, said petition being summarily denied January 30th, 1987. March Second, 1987 Petitioner filed a Motion to Set Aside and Vacate the Order of the Superior Court, which has been ignored.

STATUTORY PROVISION SUSTAINING JURISDICTION

Section 1257 (3) of Title 28, United States Code sustains jurisdiction of this Court.

SUMMARY STATEMENT OF MATTERS INVOLVED

PRELIMINARY STATEMENT.

This is a case of mis-application of the State Income Tax Law, to be found at Title 43, Arizona Revised Statutes. The result of the mis-application of said law is a violation of the Constitutionally Secured Rights of the Petitioner, namely the Fifth Amendment guarantee against the Taking of Private Property for Public Use without Just Compensation. The Petitioner is being taxed, for revenue purposes, on the exercise of the Right to provide for himself by contracting his own, personal labor to engage in lawful, innocent and harmless activities for lawful compensation.

VALIDITY OF THE STATE STATUTE IN QUESTION.

The legislation here drawn in question is Arizona Revised Statues Title 43, also known as the Income Tax Act of 1978. The Attorney General of the State of Arizona sets out 430-91001, 43-301, 43-321 and 43-841 (Appendix A, B, C and D) as his

authority to bring an Action against the Petitioner, and seeks to bind Petitioner to specifically perform under them, and further seeks to impose penalties upon the Petitioner pursuant 43-821, 43-822, 43-823 and 43-824, (Appendix E, F, G and H). Title 43, Arizona Revised Statutes is tied to 26 U.S.C., the U.S. Internal Revenue Code. (Appendix I, declaration of intent). Additionally, Attorney General is attempting to abrogate the right of the Petitioner to defend himself by imposing Attorney Fees upon Petitioner persuant to Section 12-341.01, Arizona Revised Statutes, which requires a contract, while ignoring 12-348, Arizona Revised Statutes, which specifically prohibits This State from so recovering. (Appendix J and K). "...Nor shall private property be taken for public use without just compensation" U.S. Constitution, Art. 5, Bill of Rights (Appendix L).

TIME AND MANNER IN WHICH QUESTIONS RAISED BELOW.

All questions were raised in one way or another in both, Petitioners' Motion to Dismiss and orally at the States' Summary Judgement hearing. They were also re-stated in his appeal to the Arizona Court of Appeals. Petitioner, appearing Pro Per., hasn't the language nor the eloquence to rivet the Courts' attention to his arguements. All were declared to be "frivolous".

OPINIONS OF THE COURTS BELOW.

The opinion of the Superior Court is non-existent, consisting solely of Summary Judgement in favor of the Department of Revenue. The opinion of the Court of Appeals was not reported, but appears in the record. The Supreme Court of Arizona rendered no opinion, but denied Petitioners' Petition for Review.

STATEMENT OF CASE.

Petitioner follows a calling in the Broadcast Industry as a Maintenence Technician. Stripped of that Title, Petitioner is a repairman with a particular Skill.

During the calendar year 1983, petitioner contracted to exchange his particular skill for money as a matter of right.

> The right to sell one's time and talents is an INALIENABLE, a substantive right --as is the right to seek, acquire, hold and enjoy and alienate property
> *GOLDING V. SCHUBACK*, 70 P2d 871
> *ADKINS V. CHILDRENS HOSPITAL*, 261 US 525, etc. (emphasis added)

In April of 1985 a Suit was filed in the Arizona Superior Court for Maricopa County, Number C-541705, which ultimately led here. Material set forth by the Attorney General is totally irrelevant, since he fails to show that Petitioner has been engaged in any activity which may be taxed for revenue, and not regulatory, purposes. Petitioner pointed out to Attorney General and the Courts below that he was not a mere corporation, subject to a tax for the privilege of existing, to which Attorney General replied "SO WHAT"?, and proceeded to cite corporate case law and expound upon Arizona Revised Statutes, none of which are applicable to this Petitioner. This State further says that "All the fruits of the hand and mind of man are "income" for the purpose of Arizona taxation."

The most grave and serious questions that can be presented to this Court are presented here, namely, whether or not this Court will permit to stand a judgement of a State Court which approves a revenue measure known as an income tax to be tied to the inalienable right of freedom to provide for ones' self, and in so doing permit the taking of private property for public use in the absence of "Just Compensation", as provided for in the 5th amendment to the Constitution of the United States. The holdings of the Courts below are in conflict with applicable decisions of this Court involving the abrogation of rights. Although the Attorney General made many citations, seemingly supporting his position, a closer look reveals that he was relying upon cases in the lower Courts, and mostly upon cases dealing with corporations. Corporations, being artificial beings, do not have the same rights as a living, breathing natural human being, and corporate law and decisions pertaining to it do not apply.

The holding in the case at bar is contrary to the decisions of the Supreme Courts of other States as pertains to rights and the definition of "income".

These questions have been addressed by this Court in the past, but the Arizona Courts see fit to ignore the past decisions of this Court.

The questions presented here are of nation wide importance and vitally effect and concern the fundamental rights of every inhabitant of the United States. The Courts below have decided a substantial and important federal question in a way which is in conflict with applicable decisions of this Court and have so greatly strayed from sound doctrine and the ordinary course of judicial proceedings under the Constitution of the United States as to call for an exercise of this Courts' power of review so as to correct and remedy the same.

It is submitted that this case is one calling for the Supervisory Powers of this Court to be exercised.

ASSIGNMENT OF ERRORS

The Petitioner assigns the following errors in the record and proceedings of said cause:

The Supreme Court of Arizona, the Arizona Court of Appeals and the Arizona Superior Court for Maricopa County committed fundamental error because:

(1) In refusing to honor Petitioners' petition for reconsideration the Arizona Supreme Court failed to observe that the Attorney General was pressing the Petitioner into a corporate mold, thereby stripping him of his rights, without the privileges and protections afforded by doing business in a corporate capacity.

(2) The Arizona Court of Appeals, in upholding the decision of the Arizona Superior Court for Maricopa County, failed to comprehend the error above set out for the Arizona Supreme Court. Attorney General's "So what?" comment should have in effect raised a red flag here.

(3) The Arizona Superior Court erred in refusing to recognize the superiority of the rights of the Natural Free Person over those of the State in that the state may not legislate rights away and replace them with privileges which may be taxed.

(4) The statute in question is un-constitutional as construed because it taxes the right of the individual, natural, breathing human being to provide for himself by contracting his own labor in innocent and harmless activity for lawful compensation and takes private property for public use without just compensation. (Article 5, Bill of Rights)

ARGUMENT

The Arizona Superior Court for Maricopa County (Hereafter referred to as the Superior Court) gave no reason for its decision to grant summary judgement to the attorney General, but it seems that the Court was influenced by the brief submitted by the Attorney General's office in response to Petitioners Motion To Dismiss and that of the Attorney General for Summary Judgement.

The charges made by the Attorney General are, for the most part, conclusions of law. The Attorney General fails completely to offer any evidence of revenue taxable activity on the part of the Petitioner. He fails entirely to address the rights of the Petitioner, and indeed, he seems, by his silence on the matter to deny that the Petitioner has any rights at all, save those the State might grant.

This Court in FLINT V. STONE TRACY CO., 220 U.S. 107 at page 154 said:

> "We must remember, too that the revenue of the United States must be obtained in the same territory, from the same people and EXCISE taxes must be collected from the same ACTIVITIES, as are also reached by the states in order to support their local government." (emphasis added)
>
> This Court further said:
>
> "CONCEDING the power of Congress to tax the business ACTIVITIES of private CORPORATIONS . . . the tax must be MEASURED by some standard . . ." (Flint, supra, at page 165) (Emphasis added)
>
> And, "It is therefore well settled by the decisions of this Court that when the sovereign authority has exercised the right to tax a LEGITIMATE subject of taxation as an EXERCISE of a FRANCHISE or PRIVILEGE, it is no objection that the measure of taxation is found in the income." (Flint, supra, at page 165) (Emphasis added)

Where is the activity which Petitioner engages in which makes him subject to the States' tax? Attorney General insists, and Superior Court agrees, that Petitioner is a "taxpayer", but set forth no cogent evidence of "taxpayer" status. Petitioner claims the status of NON-taxpayer, as set forth by the United States Court of Claims in 1972:

> "The revenue laws are a code or system in regulation of tax assessment and collection. THEY RELATE TO TAXPAYERS, AND NOT TO NON—TAXPAYERS. The latter are without their scope. No procedure is prescribed for NON-taxpayers, and no attempt is made to annul any of their RIGHTS and remedies in due course of law. With them Congress does not assume to deal, and they are neither the SUBJECT nor the OBJECT of the revenue laws. (*Economy Plumbing and Heating v. U.S.*, 470 F.2d 585, at page 589) (Emphasis added)

The Attorney General's case would be correct if he had jurisdiction over the Petitioner as a "taxpayer". The Attorney General refuses to show evidence of "taxpayer" status, and Petitioner suspects that none exists, or that if it does, it is erroneous, since Petitioner has never engaged to his knowledge in any activity for which an excise may be charged.

The Attorney General, in his response to Petitioners' Motion to Dismiss, stated (incorrectly) that the 16th Amendment to the U.S. Constitution obliterated the difference between income taxes that were 'direct' and those that were 'indirect', and that it makes no difference anyhow, since the Arizona Constitution does not require apportionment of direct taxes.

Petitioner respectfully differs with the Attorney General on both counts. This Court has said:

> "The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them BEFORE the Amendment was adopted."
> (*Eisner v. MaComber*, 252 U.S. 189 at page 205) (Emphasis added)

The taxing clauses of the original or organic Constitution are Article One, Section 2, clause 3, Article One, Section 8, clause

1 and Article One, Section 9, clause 4. They read as follows:

> "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons."
> *(U.S. Constitution, Article One, Section 2, clause 3, in part)* (Emphasis added)

> "The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the commnon defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States. *(U.S. Constitution, Article One, Section 8, clause 1)* (Emphasis added)
> "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herinbefore directed to be taken." *(U.S. Constitution, Article One, Section 9, clause 4)* (Emphasis added)

In accordance with the original Constitution, direct taxes must be apportioned and indirect taxes, which include duties, imposts and excises, must be uniform.

Then, in 1913, the Sixteenth Amendment entered the picture. The Sixteenth Amendment reads as follows:

> "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration." *(U.S. Constitution, Amendment sixteen)*

By observing the admonitions of this Court in EISNER, supra, that the sixteenth Amendment be construed in connection with the taxing clauses in the original Constitution, we must ask what class of tax (direct or indirect) can be laid on "incomes, from whatever source derived, without apportionment among the

several States and without regard to census or enumeration", and also without coming into irreconcilable conflict with the other parts of the Constitution?

If it were a DIRECT tax on the incomes (money or other forms of property) it would be in irreconcilable conflict with Article One, Section 2, clause 3, and also Article One, Section 9, clause 4, which require all direct taxes to be apportioned.

However, if it were INDIRECT there would be no conflict with any other taxing clause of the U.S. Constitution. The only class of tax that may be imposed without apportionment and without regard to any census or enumeration is an INDIRECT tax. It is the "without apportionment" language that confines the 16th amendment to the class of INDIRECT taxes.

The Attorney General would seem to be confused, and this Court has addressed that confusion:

> "We are of the opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax which although DIRECT should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support particular character of DIRECT tax without apportionment, and therefore if a tax is levied under its ASSUMED authority which does not partake of the characteristics exacted by the Amendment, it is outside the Amendment, and is void as a DIRECT tax in the general constitutional sense because not apportioned . . . "*Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, at Pages 10 and 11 (Emphasis added)

This is obviously what the Arizona Attorney General and the Arizona Department of Revenue believe to be fact, and perhaps even the Arizona Legislature holds a similar position. This Court, however supports the Petitioners' position as follows:

> "But it clearly results that the propositions and contentions under it, if acceded to, would cause one provision of the Constitution to destroy

another; that is, they would result in bringing the provisions of the Amendment exempting a DIRECT tax from apportionent into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject to either apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one State or States than was levied in another State or States. This result instead of simplifying the situation and making clear the limitation on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion." *Brushaber*, supra, at pages 11 and 12. (Emphasis added)

While this Court shows that the intent of the Sixteenth Amendment obviously was simplification of the situation as it existed prior to its passage and to make clear the taxing powers, and not to create radical and destructive changes in our constitutional system nor to multiply confusion, the misinterpretation and un-constitutional application of the revenue laws by those who are, as a matter of law, expected to know better are certainly creating much confusion and violating the rights of individuals.

The Arizona Attorney General states that, since the Arizona Constitution allows for a graduated income tax and has no provisions for direct or indirect taxation none of this applies in this case. This is also erroneous, on two counts. First, the U.S. Constitution is the Supreme Law of the Land, and Arizona is bound by it. Second, when Arizona adopted its income tax (Title 43, Arizona Revised Statutes), the Legislature tied and attached its provisions to the United States Internal Revenue Code, and having done so it stands to reason that the rules and conditions found there must be satisfied before Title 43 can come into play.

After reading the Citations above, we must determine just what the nature of an income tax is. This court provided the answer:

> "(T)he contention that the Amendment treats a tax on income as a DIRECT tax although it is relieved from apportionment and is necessarily not subject to the rule of uniformity as such rule ONLY applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, is also wholly without foundation . . ." *Brushaber*, supra, at Page 18 (Emphasis added)

> And: "(T)he conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the CONTRARY recognized the FACT that taxation on income was in its nature an EXCISE entitled to be enforced as such . . ." *Brushaber*, supra, at Pages 16 and 17. (Emphasis added)

> And: "(T)he Sixteenth Amendment conferred NO NEW POWER of taxation but simply prohibited the previous complete and plenary power of income taxation posessed by Congress FROM THE BEGINNING from being taken out of the category of INDIRECT taxation to which it inherently belonged . . ." *(Stanton v. Baltic Mining Co.)*, 240 U.S. 103 at page 112. (Emphasis added)

In light of the above, we know that the income tax, and this includes any and all income taxation, must be, by its very nature, an indirect tax, entitled to be enforced as such:

> "Indirect tax. A tax upon some right or privilege or corporate franchise; e.g. privilege tax; franchise tax. Madison Suburban utility Dist. of Davidson County v. Carson, 191 Tenn. 300, 232 S.W. 2d 277, 280. A tax laid upon the happening of an event as distinguished from its tangible fruits. Chickering v. Commissioner of Internal Revenue, C.C.A. Mass., 118 F.2d 254, 258". *Blacks Law Dictionary*, 5th Ed. Page 695

What of the "right" mentioned in the definition above? Obviously that must be a right the government has the power to grant, since the inalienable are those granted by God, and the State may not abridge them except in punishment for a crime.

An indirect tax is also an EXCISE. (see Brushaber, supra) The next question to be answered is, Just what is an excise? The Courts, including this Court have answered this also:

> "The terms "excise" tax and "privilege" tax are synonymous." *American Airways v. Wallace*, 57 F2d 170 at page 880.
>
> "Excises are taxes . . . laid upon licenses to persue certain ocupations and upon corporate privileges. Cooley-Constitutional Limitations, 7th edition at page 680. See also Flint supra. (Emphasis added)
>
> ". . . an excise is an impost for the license to pursue certain callings or to deal in special commodities or to exercise particular franchises . . ." *East Ohio Gas Co. v. Tax Commissioner of Ohio*, 43 F2d 170, at page 172.
>
> "A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an INDIRECT tax . . ." *Tyler v. U.S.*, 281 U.S. 497, at page 502. (Emphasis added)

Having read all this, where is the "Privilege" the Petitioner supposedly enjoys that the State of Arizona may tax for revenue purposes? What activity does the Petitioner engage in that requires him to fill out forms, and pay in money to the State? Is it occupying airspace in Arizona? Is Arizona saying that the Petitioner is within the geographic boundaries recognized as being "Arizona", and so the State is entitled to take some of what he earns merely for that privilege? The Attorney General claims Sovereignty in this matter. How? Is it because he works for the Corporate entity called the State? Is the State in fact Sovereign over its citizenry. I think not. I pray not.

> "In the United States, Sovereignty resides in the people, who act through the organs established by the Constitution." *Chisholm v. Georgia*, 2 Dall 419, 471; *Penhallow v. Doan's Administrators*, 3 Dall 54, 93; *McCullock v. Maryland*, 4 Wheat 316, 404, 405; *Yick Wo v. Hopkins*, 118 U.S. 356, 370.

The Petitioner here sees no mention in the above Citation regarding the sovereignty of the State. The State is indeed sovereign over all it may create, but did Arizona create the Petitioner? The Petitioner lives and breathes. The State may be powerful, and may even be able to end his life under certain circumstances, but the State of Arizona DID NOT create the Petitioner, and so the Petitioner claims his God Given Right to provide for himself without interference. The Attorney General claims that there is no such right, but this Court has said differently:

> "He (the individual) owes NOTHING to the public so long as he does not trespass upon their rights." *(Hale v. Henkle*, 201 U.S. 43, at Page 74) (Explanation added) (Emphasis added)
>
> "The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract in unlimited. He owes NO DUTY to the state or his neighbors to divulge his business, or to open his doors to an investigation. He OWES NO SUCH DUTY to the State since he recieves nothing therefrom, beyond the protection of his life and property. His RIGHTS are such as existed long antecedent to the organization of the State, and can only be taken from him by due process of law, and IN ACCORDANCE with the Constitution." (*Hale*, supra, Page 74). (Emphasis added)

The States, at the beginning, gave the Congress and the Governent complete taxing power. However they could not give the Federal Governent any power they did not posess themselves, and they did not posess the power to impose an excise on the right of the individual to support himself by engaging in ordinary, innocent and harmless activities for lawful compensation, and the Petitioner contends that they do not now posess that power.

The Attorney General makes much of the Petitioner's "Tax Liability". Let us look at the definition of the word "Liable":

> "Liable: Bound or OBLIGATED in law or equity; RESPONSIBLE; CHARGEABLE; ANSWERABLE; COMPELLABLE TO MAKE satisfaction, compensation or restitution.

(*Homan v. Employers Reinsurance Corporation*, 345 Mo. 650, 136 S.W. 2d 289, 298.) Obligated; accountable for or CHARGEABLE with; Condition of being bound to respond because a WRONG has OCCURRED; Condition out of which a legal liability might arise. (*Pacific Fire Insurance Co. v. Murdock Cotton Co*, 193 Ark. 327, 99 S.W. 2d 233, 235. Justly or legally responsible or answerable." *Black's Law Dictionary*, 5th edition, page 824. (in part) (Emphasis added).

What "wrong" has occured? How did the Petitioner become "bound" or "chargable"? What inequity has been worked by the Petitioner that makes him "compellable to make satisfaction, compensation or restitution"? In short, what HARM has been done for which Petitioner may be made to pay? How did he become "LIABLE" for the State's tax?

Before he can become "Liable" for a tax, the Petitioner must be "subject to" that tax.

"Subject to. Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; ANSWERABLE for. Homan v. Empoyers Reinsurance Corp., 345 Mo. 650, 136 S.W. 2d 289, 302." *Blacks Law Dictionary*, 5th Ed., Page 1278.

How was the Petitioner made "subordinate, subservient or inferior" to the Arizona Department of Revenue, or any other Governmental Agency, either state or Federal?

The Petitioner is not an attorney, and so at this time he will take advantage of the fact by putting forth a scenario to further justify and demonstrate his position:

A man, let's call him "Joe", has a job sweeping floors; an activity which is lawful, innocent and harmless. Does anyone have the right to claim part of what he has earned simply because he has earned it? ("O.K. Joe, YOU earned some money and we claim a part of it.") The very thought of this supposed claim is ludicrous.

Suppose Joe obtains a second job sweeping floors, and is now working sixteen hours a day instead of the original eight Does anyone have a right to claim any part of Joe's EXTRA earnings?

("O.K. Joe, you are now getting more money. WE want an even bigger cut".)

No one in posession of all their faculties can honestly believe that Joe owes anybody anything; let alone a bigger cut because Joe works harder. Anyone who wants part of what Joe has worked for has the heart of an extortionist, and should apply for a job with organized crime.

The scenario set forth above is a fictional account of just what the State of Arizona has said to the Petitioner.

> In 1930 the Supreme Court of Oregon told us:
>
> "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are NATURAL RIGHTS for the enjoyment of which an EXCISE cannot be imposed." *Redfield v. Fisher*, 292 P. 813, at Page 819 (Emphasis added)

Redfield, supra, is an excellent case to read because the Court thoroughly considered the nature of the tax and the difference between a tax directly upon income (as property) as opposed to a tax on revenue taxable activities, such as doing business in a corporate capacity.

The Constitution is not worth the paper it is written on if the Legislatures (State and Municipal) or Superior Court were not bound to respect it except so far as it agrees with the policy such local governing factor might choose to follow. The Bill of Rights is not a mere guide for the exercise of legislative discretion, but is part of the fundamental law of the land, containing express restraints upon the governing power of the Nation, States and municipalities.

Wth the advance of the totalitarian spirit across the face of the world in the past fifty - or - so years, there has been a tendency in Republics and Democracies to drift aimlessly away from the 'mooring cables' serving as checks and balances of government. In this the United States has been no exception. The Forefathers who wrote the Constitution clearly intended and stated that its function was to secure "the Blessings of Liberty to ourselves and our posterity." Petitioner is of the "posterity" to be found in the preable. This Court was established to keep the "Ship of State" anchored in its proper position and to prevent encroachments

upon the "Blessings of Liberty". It has thus served as the keystone of Government.

During the first sixty-eight years of this Court's existence it was not called upon to declare a law unconstitutional. This was because Legislators and executives, faithful to their oaths of office, exercised only the power granted to them. Failure of Legislators and executives to hold themselves in check has many times caused this Court to rightly exercise its power of restraint granted under the Constitution.

Throughout the history of the Court there has been maintained the proper attitude of non-interference by government with private property rights, business and personal activity, except where absolutely necessary in the interest of public welfare under the police power. Until about fifty years ago the attitude was always assumed that Government was a means to an end, to wit, liberty and happiness of the governed. The end was never the supremacy of the State.

It is to be noticed that since around 1935, especially with reference to private business rights the policy has changed from non-interference by Government to regualtion and control by government. This may be necessary as a means of following the economic life of the Nation and supplying its needs, and in any event is not debated or questioned here. While the needs may justify such change in economic affairs of life, there certainly is no showing or justification as to any need for a similar change with reference to the exercise of fundamental Rights of the inhabitants of the land. Any turn toward the regulation of rights must be halted now. Such fundamental personal rights as are guaranteed by the first Ten Amendments cannot be infringed by any law without further amendment to the Constitution, except in cases where ones' conduct presents a clear and present danger which is immediate against the public peace of the State, the morals of the people, and their property rights. In short, punishment for a crime. This is allowed for in the 5th Amendment, and brings up no additional Constitutional question. Even when dealing with such abuses the law employed must be directed at the abuse, and a general law interfering with exercise of any secured right cannot be enacted or applied.

Taxes imposed on the exercise of Constitutionally Secured Rights for the admitted purpose of raising revenues find no justification whatsoever in the Constitution, in the law or in reason. The Petitioner submits that, permitted to go on this will

be but the beginning of the sequence of events that will lead to permitting standardless, indiscriminate and capricious regulation and control and ultimate absolute suppression of fundamental personal rights. The Cavalier attitude of the Superior Court and the Attorney General is further evidence of encroachment upon the rights of the individual. It has reached such proportions as to be accepted policy within the State of Arizona and so deeply entrenched as to draw the contempt of the Executive branch, when it is challenged as evidenced in the attitude pointed out above.

The Ninth Circuit Court of Appeals told us:

"A practice condemned by the Constitution cannot be saved by historical acceptance and present convenience." (*U.S. v. Woodley*, 726 F.2d 1328 at Page 1338.

"To lay with one hand the power of the government on the property of a citizen, and with the other to bestow it on favored individuals to aid private enterprise and build up private fortunes, is none the less robbery because it is done under forms of law and is called taxation. This is not legislation. It is a decree under legislative forms." (*Miller*, 20 Wall, 655, at Pages 663, 664.)

And the Florida Supreme Court said in 1948:

"The Bill of Rights was provided as a barrier, to protect the individual against arbitrary exactions of . . . legislatures, (and) courts . . . it is the pri mary distinction between democratic and totalitarian way."

Re Stroller, Supreme Court of Florida, en banc, 36 So. 2d 443 at page 445

And this Court tells us:

"In ali such particulars the employer and employee have equality of right, and legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can justify in a free land." (*Adair v. U.S.*, 208 U.S. 161)

This Court, speaking on rights, also said:

"Where rights secured by the Constitution are involved, there can be no rulemaking or legis-

lation that would abrogate them." (*Miranda v. Arizona*, 384 U.S. 436 at page 491)

This Petitioner could go on for page after page of Citations of this Court showing the error of the Courts below, but that would be pointless. Many of these Citations and at least as many more have been relied upon by the Petitioner in defending himself against the State, all to no avail. The Attorney General characterized the Petitioner as a "Tax Protester". The Petitioner is NOT a 14th Amendment citizen, but is a member of the body of "We the People" set forth in the Preamble to the Constitution of the United States. The Petitioner respectfully submits that there is a great distinction between protesting a tax and fighting extortion.

IN SUMMATION

It is submitted that this case is one calling for the exercise by this court of its supervisory powers under the Judicial Code and the Rules of this Court. To that end this Petition for writ of certiorari should be granted so as to correct the assigned errors committed by and judgement rendered by the Arizona Superior Court for Maricopa County against the Petitioner.

Wherefore the Petitioner prays that this Court issue a Writ of Certiorari to the Arizona Superior Court for Maricopa County, directing such Court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case, and that the decrees and afirmations of the Arizona Superior Court, the Arizona Court of Appeals and the Supreme Court of Arizona be here set aside and reversed, and that Petitioner be granted such other and further relief as to this Court may seem just and proper under the circumstances.

Respectfully Submitted this _____ day of _____, 1987.

_____

Randal William Howard, In Propria Persona

Copies of the Foregoing mailed this day to:

Hon. Armondo De Leon, Judge
Arizona Superior Court for Maricopa County
Division 40
201 W. Jefferson St.
Phoenix, AZ 85003

John W. Ranby
Assistant Attorney General
1275 West Washington St.
Phoenix, AZ 85007

Court Order Number One

10/1/85 Hon. Judge Armondo De Leon, E. Lizarraga, deputy, No. C-541705

8:30 A.M. This is the date set for hearing oral argument on defendant's motion to dismiss; Plaintiff's motion for summary judgement. Plaintiffs are represented by counsel, J.W. Ranby. Defendant is present in propia persona.

Court reporter Irene Kieth is present.

Argument is presented to the Court. IT IS ORDERED taking this matter under advisement.

LATER:

The State has filed suit in order to impose income tax liability of Mr. Randal W. Howard for calendar year 1983. Defendant Howard seeks to dismiss the action on several grounds. The Court has reviewed the argumants advanced by defendant Howad and deems them to be unmeritorious. Accordingly,

defendant Howard's Motion to Dismiss is denied.

The State, on its part, seeks summary judgment for all relief sought in its complaint. the Court, as a matter of law, finds there are no genuine issues of material fact that plaintiff is entitled to judgement. Consequently, the State's Motion for Summary Judgment is granted.

The State will provide Mr. Howard with notice of its intent to

Court order number one page 4

seek a penalty under A.R.S. 43-841, and for that purpose a hearing is set on October 30, 1985 at 8:30 o'clock A.M. at which time the Court will consider whether gthe defendant Howard is liable for penalty of not more than $1,000.00

Superior Court Order Number 2

11/1/85 Hon. Judge Armando De Leon, E. Lizarraga, deputy No. C-541705

It is ordered approving and settling formal written Judgment against defendant signed by the Court this date, and filed herein.

Ariz. Court of Appeals, memorandum decision Cause Number 1 CA-CIV 8706

Appeal from the superior Court of Maracopa County Cause No. C-541705 The Honorable Armando de Leon, Judge

AFFIRMED

This appeal has been considered by the Court, Presiding Judge Melvyn T. Shelley and Judges Kleinschmidt and Haire participating.

Appellant appeals from a judgment ordering him to pay the

amount of state personal income tax owed for 1983, along with associated administrative penalties, interest, a judicial penalty for failure to file a return and attorney fees.

Apellant was a resident of Arizona during all times pertinent to this lawsuit. In 1983, he had a taxable income of at least $23,807.26, but did not file an Arizona personal income tax return for 1983.

All of the issues raised by appellant have been previously decided adversely to appellant's positions in numerous cases. The law is coutra to appellant's assertions. The judgment of the trial court is affirmed.

We find this appeal is frivolous. Persuant to Rule 25, Arizona Rules of Civil Procedure, we assess damages in the nature of attorney fees against appellant and in favor of appellee in the sum of

$500.00 and direct the trial court to enter judgment for said amount.

Above un-dated, but was filed July 30, 1986, and recieved by Petitioner July 30, 1986

Ariz. Supreme Ct. Order

Jan. 28, 1987

RE: STATE ex rel AZ DEPT REVENUE

vs. RANDAL W. HOWARD

Supreme Ct. No. CV-86-0582-PR
Court of Appeals No. 1 CA-CIV 8706
Maricopa County No. C-541705

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on January 27, 1987, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Record returned to the Court of Appeals, division One, Phoenix, this 28 day of January, 1987.

DAVID R. DOLE, CLERK

APPENDIX A

TITLE 43, ARIZONA REVISED STATUTES
SECTION 1001

Definitions:
(Definitions one through eleven)

12. "Taxpayer" means any person subject to a tax imposed by this chapter.

Appendix B

43-301. Individual returns

A. An individual taxable under this title shall file a return with the department if he has, for the taxable year:

(Goes on to describe "dollar amounts", but not who is taxable.)

Appendix C

43-321. Information required in returns

Each return required to be filed under this title shall contain the following:

1. It shall contain or be verified by a written declaration that it is made under penalties of perjury.

2. A specific statement of the items of the taxpayer's gross income and the adjustments, deductions and credits allowed by

this title.

3. Such other information as the department may by regulation prescribe for the purpose of carrying out the provisions of this title.

Appendix D

43-841. Failure to file or supplying false information; intent to evade

Any person who, with or without intent to evade any requirement of this title or any lawful regulation of the department of revenue under this title, fails to file any return or to supply any information required under this title or who, with or without such intent, makes, renders, signs or verifies any false or fraudulent information is

liable to a penalty of not more than one thousand dollars. The penalty shall be recovered by the department of law in the name of the state of Arizona by action in any court of competent jurisdiction.

Appendix E

43-821. Penalty for failure to file return

If any taxpayer fails to make and file a return required by this title.....

Appendix F

43-822. Penalty for failure to file on demand

If any taxpayer upon notice and demand fails or refuses to make and file a return required by this title, ...

Appendix G

43-823. Penalty for failure to furnish information requested

If any taxpayer fails or refuses to furnish any information requested...

Appendix H

43-824. Penalty when failure due to negligence

If any part of any deficiency is due to negligence or intentional disregard of rules and regulations but without intent to defraud, five percent of the total amount of the deficiency, in addition to the deficiency and other penalties provided in this section, shall be assessed, collected and paid as if it were a deficiency.

Appendix I

43-102. Declaration of intent

A. It is the intent of the legislature by the adoption of this act to accomplish the following objectives:

1. To adopt the provisions of the federal internal revenue code relating to the measurement of adjusted gross income for individuals, to the end that adjusted gross income reported each taxable year by an individual to the internal revenue service shall

Intent, continued

be the identical sum reported to this state, subject only to modifications contained in this title.

2. To adopt the provisions of the federal internal revenue code relating to the measurment of taxable income for corporations, trusts, estates and partnerships, to the end that taxable income reported each taxable year by a corporation, trust, estate or partnership to the internal revenue

service shall be the identical sum reported to this state, subject only to modifications contained in this title.

3. To achieve the results in paragraphs 1 and 2 by the application of the various provisions of the federal internal revenue code relating to the definitions of income, exceptions, deductions, (except itemized deductions and personal exemptions for individuals, corporations,

Intent, continued

trusts, estates and partnerships, basis and other pertinent provisions relating to gross income as defined, resulting in an amount called adjusted gross income for individuals and taxable income for corporations, trusts, estates and partnerships in the internal revenue code.

4. To impose on each resident of this state a tax measured by taxable income wherever derived.

5. To impose on each

Intent, continued

nonresident and each corporation with a business situs in this state a tax measured by taxable income which is the result of activity within or dreived from sources within this state.

B. Nothing contained in this act shall be construed to require a taxpayer to include an item of income or permit a taxpayer to deduct an expense item more than once in computing Arizona taxable income.

Appendix J

12-341.01. Recovery of attorney's fees

A. In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney's fees. This section shall in no manner be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney's fees.

B. The award of reasonable

Appendix J, continued

attorney's fees awarded pursuant to subsection A should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. ...

C. Reasonable attorney's fees shall be awarded by the court in any contested action upon clear and convincing evidence that the claim or defense constitutes <u>harassment, is groundless and not made in good faith.</u> ...

Appendix K

12-348. Award of fees and other expenses against the state; reduction or denial of award; application; basis for amount of award; source of award; definitions

A. In addition to any costs which are awarded as prescribed by statute, a court shall award fees and other expenses to any party other than this state which prevails by an adjudication on the merits in any of the following:

1. A civil action brought by the

STATE against the party.

2. A civil action brought by the party against the state to challenge the assessment or collection of taxes.

(balance of statute not applicable in this matter)

Appendix L

Final twelve words, Article V, Bill of Rights, Constitution of the United States:

"...; nor shall private property be taken for public use without just compenstation."